IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5068 OF 2005

Shri Sai Bhagwati Co-op. Housing Society (Proposed) & Anr. .. Petitioners

V/s

The Slum Rehabilitation Authority and Ors. .. Respondents

Mr.H.S. Anand with Mr.Vaibhav Sugdare for the Petitioners.

Mr.G.D. Utangale for Respondent No.1.

Mr.C.R. Sonawane, A.G.P. for Respondents No.2, 6 and 7.

Mr.A.Y. Sakhare with Mr.D.S. Sakhalkar for Respondent No.3.

Mr.S.G. Surana for Respondent No.5.

Mr.A.R. Mishra for interveners to oppose the petition.

CORAM : H.L. GOKHALE & J.H. BHATIA, JJ.

DATE : 30TH JUNE 2006

ORAL ORDER : (Per Gokhale, J.)

1. Heard the counsel for the parties.

2. This petition is filed by a proposed housing society of over 100 slum dwellers who want to develop a slum area situated in Andheri / Vile Parle (East), Mumbai. Petitioner No.2 is a slum developer whom they

have chosen to develop this property. They are challenging the decision of the Secretary (Housing) dated 21st April 2005 whereby he has directed Respondent No.1 to consider the proposal of Respondent No.3 and to issue them the Letter of Intent to develop the concerned property. Respondent No.3 is a developer appointed by Respondent No.5 which is another proposed cooperative housing society and which has interest in developing the same parcel of land.

3. The short facts leading to this petition are thiswise that the concerned parcel of land belongs to the Municipal Corporation. Neither the 1st Petitioner society nor the 5th Respondent society or their respective builders have any rights whatsoever in this parcel of land. Their rights will have to be examined only in the context of whatever limited status they have been given under the relevant statutes and that status is confined to this much that 70% of slum dwellers of a slum can apply for development of that slum property. Under the Scheme, the relevant Act and the Rules for slum rehabilitation as explained by this Court, the application of a proposed society is to be examined by the Slum Rehabilitation Authority (SRA) on receiving it and if the application of one proposed society is rejected, then only the proposal of another group can be entertained.

4. This position has been explained by this Court in a Division Bench judgment, to which one of us (Gokhale, J.) was a party, i.e. Writ Petition No.2746 of 2005 decided on 26th April 2006. In para 20 of this judgment, this Court has observed as follows:-

> "20. If the entire scheme under Regulation 33(10) is perused it is obvious that if 70% of the slum dwellers on a particular area come together and apply after formation of proposed co-operative housing society, the said application has to be independently considered in accordance with law. The scheme does not contemplate simultaneous consideration of such an application made by a proposed society with an Application subsequently made by another proposed society relating to same land. The Applicant-society has to have 70% support which obviously two societies cannot have. The Application received first is to be processed first independently. If it fails to get 70% support, Second Application can be examined. The obvious intention is to avoid unhealthy competition between the different builders who are interested in supporting such societies. If such a course of simultaneous consideration is

permitted to be adopted, unscrupulous persons, and builders will try to win over the hutment dwellers who have supported the application made earlier by another society. Therefore, it is not desirable that an application which is earlier made and the one which is subsequently filed should be considered together. That is not the scheme provided under D.C.Regulation 33(10). It is necessary that the application which is first received in respect of a particular property by the SRA should be processed and decided first. After decision of the first Application, the second Application made by another society can be considered depending on the result of the first Application. The reason is that none of the societies have any right, title and interest in respect of the property. Such a course will prevent the unhealthy competition between the builders or between the leaders of two groups in a slum area."

5. In the present matter, what has happened is that Respondent No.5 proposed society submitted its Annexures II and III as required under the relevant Development Control Regulations some times in September 2003. Annexure-II was submitted to the Municipal Corporation,

i.e. the land owning authority, earlier in July 2003. They have paid the necessary charges for scrutiny some times little later. It is the contention of the 1st Petitioner proposed society that this Respondent No.5 proposed society was subsequently dissolved. This they claim to have happened some times in June 2004. A typed copy of the minutes of that decision are annexed at page 98 of this petition. It appears from this typed copy, which is supposed to be an extract of a minute book, that the authority of the Development Committee concerned was withdrawn. This is at the highest. There is no decision to dissolve the proposed society as such. It has also not been shown that any such proposal was forwarded to the Registrar of Cooperative Societies. This being the position, there is not much substance in the submission of the 1st Petitioner proposed society that Respondent No.5 proposed society was dissolved by any such decision which is supposed to have been arrived at on 6th June 2004 as claimed.

6. This being the position, so long as the proposal of Respondent No.5 proposed society was not decided, there was no occasion for the authority of SRA to entertain any proposal of any other party. The mechanism of receiving this proposal is laid down in Part IV of the guidelines for the implementation of the SRA Scheme. Clause 11 provides for pre-scrutiny of the

application received from a proposed society and its Annexures I, II and III by a designated engineer of SRA. Thereafter a computerised file number is allotted. In the present case, such a number was given to the 1st Petitioner proposed society on 1st October 2004, though the prior application of Respondent No.5 was not disposed of. Respondent No.5 society felt aggrieved by entry of the 1st Petitioner proposed society and, therefore, made a representation to the Secretary (Housing). That representation has come to be entertained by him by passing an order on 21st April 2005. It is this order which is under challenge. As far as the contents of the order are concerned, this order records that the SRA ought not to have proceeded to entertain the application of the 1st Petitioner without hearing Respondent No.5 proposed society which had given necessary documents and Annexures II and III much earlier. It is therefore that principally the Secretary (Housing) has passed the impugned order and directed the SRA to issue the Letter of Intent to Respondent No.5.

7. Mr.Anand and Mr.Sugdare appearing for the Petitioners submitted that this order passed by the Secretary was outside the powers of the State Government under section 3K of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971.

This section reads as follows:-

> "**3K. Power of State Government to issue directions**.- (1) The State Government may issue to the Slum Rehabilitation Authority such general or special directions as to policy as it may think necessary or expedient for carrying out the purposes of this Act and the Slum Rehabilitation Authority shall be bound to follow and act upon such directions.
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> (2) (a) Without prejudice to the generality of the foregoing provision, if the State Government is of opinion that the execution of any resolution or order of the Authority is in contravention of, or in excess of, the powers conferred by or under this Act or any other law for the time being in force, or is likely to lead to abuse or misuse of or to cause waste of the Fund of the Authority, the State Government may, in the public interest, by order in writing, suspend the execution of such resolution or order. A copy of such order shall be sent forthwith by the State Government to the Authority and its Chief Executive Officer.
>
> (b) On receipt of the order sent as aforesaid,

> the Authority shall be bound to follow and act upon such order."

8. Mr.Sugdare relied upon two judgments of the Apex Court. Firstly, he relied upon a judgment in the case of **Bangalore Development Authority v. R. Hanumaiah- (2005) 12 SCC 508**. That was a case concerning the interference by the Chief Minister into certain decisions of the Bangalore Development Authority by exercising the powers of the State Government under section 65 of the Bangalore Development Authority Act, 1976. This section is quoted in para 50 of that judgment which reads as follows:-

> "65. Government's power to give directions to the Authority.- The Government may give such directions to the Authority as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of the Authority to comply with such directions."

What is observed by the Apex Court in paragraphs 51, 52 and 58 is pressed into service by Mr.Sugdare. He submitted that under this section only a direction for carrying out the purposes of the Act could be given. In the instant case, the Apex Court has noted that it has

not been shown that the Chief Minister was authorised to issue directions to Bangalore Development Authority. That apart, on facts, the Court noted in para 52 that the direction given by the Chief Minister in the instant case would not be to carry out the purposes of the Act rather than it would be to destroy the same. At the end of para 51, the Court has clearly observed -

> "The Government can given such directions to the Authority which in its opinion are necessary or expedient for carrying out the purpose of the Act."

9. The second judgment relied upon is in the case of **State of U.P. v. Neeraj Awasthi - (2006) 1 SCC 667**. The relevant section in consideration was section 26-M of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964. That section reads as follows:-

> "26-M (1) In the discharge of its functions, the Board shall be guided by such directions on question of policy as may be given to it by the State Government.
>
> (2) If any question arises whether any matter is or is not a matter as respects which the State Government may issue a direction under

> sub-section (1), the decision of the State Government shall be final."

While considering that section, the Court has observed in para 40 that power of the State Government was confined to issue directions on questions of policy. It however cannot interfere in the day-to-day functioning of the Board. In our understanding, that clearly arose from the wording of Section 26-M that was under consideration in the matter.

10. As far as the present scenario is concerned, Section 3K is quite wide as we have seen. It is undoubtedly true that in day-to-day functioning, the State Government is not expected to interfere. At the same time, in the present case, what has happened is that on facts the action of the SRA in entertaining the application of the 1st Petitioner before disposing of the pending one of Respondent No.5, was clearly contrary to the Scheme of development as interpreted by this Court. That being so, the Secretary (Housing) was clearly within his powers and he has rightly set aside the entertaining of the application of the Petitioners by SRA.

11. The part of the order of the Secretary, which directs the SRA to issue Letter of Intent to Respondent

No.5, is however defective. The scrutiny of Annexures II and III is not completed as yet and the SRA has yet to arrive at the conclusion that Respondent No.5 does have the support of 70% of the slum dwellers. It is thereafter only that the Letter of Intent can be issued. This position, as stated by Mr.Utangale for SRA, is not disputed by Mr.Sakhare and Mr.Surana appearing for the contesting Respondents. The slum dwellers of course have the right to get a tenement of 225 sq.ft. free of any cost. Whether Respondent No.5 develops the property or whether the 1st Petitioner proposed society develops it, all of them will have to be accommodated. Therefore, whether the 1st Petitioner develops the property or the 5th Respondent does not make any difference whatsoever except that the Managing Committee of the two societies will be different. Mr.Surana for Respondent No.5 society has offered to co-opt the members of the Managing Committee of the 1st Petitioner society in their Managing Committee, to which Mr.Anand for the Petitioners is not agreeable. This clearly indicates a dispute between the two groups who are obviously backed by two builders. As stated earlier, the slum dwellers only have a limited right and the developers have no right whatsoever on the property concerned. Their rights are only to this limited extent that their applications are to be considered in accordance with law and nothing more.

12. Thus as far as the last part of the impugned order directing issuance of Letter of Intent is concerned, it was undoubtedly not called for at this stage. Therefore, although we do not interfere with the order passed by the Secretary (Housing) to the extent of setting aside the registration of the Petitioners' application by the SRA, the part of the direction which directs the SRA to issue the Letter of Intent to Respondent No.3 is quashed and set aside. The petition is entertained only to this limited extent. In the event Respondent No.5 fails in establishing the majority of 70% of the slum dwellers, the application of the 1st Petitioner proposed society will of course be considered thereafter.

13. Petition stands disposed of with the above order.

14. Mr.Anand applies for stay of this order. There is no need to grant any such stay inasmuch as scrutiny of the membership of the Respondent No.5 Society and as to whether it has 70% membership will take its own time. In the meantime, the Petitioners can certainly challenge this order. Request for stay is therefore rejected.

(H.L. GOKHALE, J.)

(J.H. BHATIA, J.)